No. 91-1489 (1)

Supreme Court, U.S.
FILED
FEB 5 1992
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

MONTE LEE,

Petitioner,

vs.

UNITED STATES GOVERNMENT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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CONTENTS REPRODUCED FROM FURNISHED PRETYPED COPY

QUESTIONS PRESENTED FOR REVIEW

1. Whether the dismissal by the Ninth Circuit on the grounds that:

> "Any antitrust claim arising out of the state court injunction is barred by res judicata and collateral estoppel is false."

The following clear evidence was before the Ninth Circuit:

> "The question of res judicata and collateral estoppel has been fully briefed, argued, and twice decided adversely to defendants. On the basis of the orders of United States District Judge David Williams and Judge William Byrne, Jr., denying Metro-Goldwyn Mayer's motion.
>
> "United States District Judge William Matthew Byrne, Jr., Judge

Presiding. The Court: 'AS TO ISSUE NO. 2, ON RES JUDICATA AND COLLATERAL ESTOPPEL, IT GOES OUT OF PRETRIAL.'"

2. Whether a judge who hands down a false order with the knowledge that it is false is acting in clear absence of his jurisdiction.

LIST OF PARTIES TO THE PROCEEDING

Monte Lee and the Executive, Legislative and Judicial branches of Government.

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No. _____

IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1991

MONTE LEE,

Petitioner,

vs.

UNITED STATES GOVERNMENT,

Respondents.

PETIION FOR WRIT OF CERTIORARI

Monte Lee petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

JURISDICTION

A timely petition for rehearing with suggestion for rehearing en banc was denied

on November 25, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254, n.7.

CONSTITUTION, FEDERAL AND STATE STATUTES

The relevant portions of the Constitution and federal and state statutes are adequately set forth in the Petition.

PRELIMINARY STATEMENT

Metro-Goldwyn-Mayer, Inc., and Cinerama, Inc., entered into an unlawful contract, the substantial terms of which MGM and Cinerama were to pool profits, block book various motion pictures, impose vertical distribution restraints, and engage in circuit dealings. (Defendant's Joint Complaint, paragraphs I, III, and IV, Metro-Goldwin-Mayer, Inc., et al. v. Monte Lee,

et al., Civil No. 783, 825, Superior Court of California, Los Angeles County, 1961.) The terms of the written agreement between the defendants have long been held to be violative of the Sherman Act. United States v. Paramount Pictures, 334 U.S. 131, 68 S.Ct. 915 (1948), and United States v. Paramount Pictures, 70 F.Supp. 53 (1947). In an effort to conceal the proceeds of this illegal agreement, the defendant MGM received the approval of Cinerama to form the defendant, Gallen Films, S.A., a Switzerland corporation. Gallen Films, S.A., was used by the defendants, MGM and Cinerama, as a dummy corporation for the ostensible purpose of producing the film, "The Wonderful World of Brothers Grimm."

At that time the plaintiff was an independent distributor who was endeavoring to sell a picture in the open market. In

furtherance of their illegal agreement and because the plaintiff was a competitive threat to the fulfillment of the defendants' unlawful alliance, the defendants jointly caused litigation to be used against the plaintiff with the purpose in whole and in part of totally eliminating the competition of the plaintiff.

The Law Offices of Joseph L. Alioto substituted themselves in place of plaintiff on or about May 12, 1971, who was then in pro per and at the pre-trial stage in an antitrust action in the courtroom of United States District Judge David Williams, Central District of California, in an action entitled as follows: Monte Lee, plaintiff vs. Edward Mosk, Norman Rudman, Attorneys at Law, and Metro-Goldwyn-Mayer, Inc., a corporation, Cinerama, Inc., a corporation, and Gallen Films, a corporation, defendants, Civil Case No. 66-1804.

The Law Offices of Joseph L. Alioto committed themselves to represent plaintiff on the illegal use of judicial and administrative adjudicative proceedings to restrain interstate trade and commerce and to eliminate competition. Antitrust action brought under Section 4 of the Clayton Act (15 U.S.C. 15), which caused injury to the appellant.

The Law Offices of Wyman, Bautzer, Rothman & Kuchel, through attorney Frank Rothman, represented Metro-Goldwyn-Mayer, Cinerama, and Gallen Films.

The case was transferred on June 2, 1971, to the calendar of Judge William Matthew Byrne, Jr., for all further proceedings.

STATEMENT OF THE CASE

Plaintiff filed this action on June 18, 1990, naming as defendant the "United States Government." The Complaint for Damages alleged that it is UNCONSTITUTIONAL FOR THE GOVERNMENT TO PROTECT TAX EVADER, OBSTRUCTION OF JUSTICE, AND VIOLATOR OF ANTITRUST LAWS, JURY TRIAL DEMANDED.

Plaintiff's case was transferred from the courtroom of United States District Judge Edward Rafeedie [CV 90-3119-ER(Gx)] to the courtroom of Judge Manuel L. Real [CV 90-3119-R]. ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 224 (Related Case). Documents subsequently filed in the case had been reassigned to Judge Real substituting initial "R" so the number will read CV 90-3119-R.

Plaintiff responded to defendant United States Government's Notice of Motion and Motion to Dismiss Action on October 15, 1990, at 10:00 a.m., in the courtroom of Judge Manuel L. Real, United States District Court for the Central District of California.

Plaintiff directed the Court's attention to plaintiff's RESPONSE TO ORDER TO SHOW CAUSE filed July 26, 1990, wherein plaintiff stated the following:

> "The action should not be dismissed for the reason that it is well grounded, threefold in facts, evidence and legal theory.
>
> "Criminal acts are revealed by wrongdoers in Court filed documents, interrogatories, depositions and corporate records."

Further, plaintiff contended before Judge Manuel Real the following:

> "This Court has a continuing jurisdiction in this matter in that the crimes took place within the courtrooms housed in this building, United States District Court, Central District of California. SCOPE AND EXTENT OF JURISDICTION OF FEDERAL COURTS IS GOVERNED BY 28 U.S.C.A., paragraph 1251, et seq."

Plaintiff cited five government protected criminal acts to Judge Real contained in PLAINTIFF'S MEMORANDUM OF CONTENTIONS OF FACT AND LAW (Local Rule 9(e)) filed in this Court September 19, 1990.

ARGUMENT

GOVERNMENT PROTECTED CRIMINAL ACTS

1. Government gave protection to Metro-Goldwyn-Mayer, who made it a practice to destroy records, receipts, paid invoices, in its Publicity and Advertising Departments, not only in plaintiff's case but on one thousand (1,000) motion pictures, concealing millions of dollars in unaccountable money.

2. Protected obstruction of justice knowing that it is an obstruction of justice to destroy evidence that is wanted in the judicial proceeding which is made clear in United States v. Perlstein, 126 F.2d 799; Commonwealth v. Russo, 177 Pa.Super.470, 111 A.3d 359.

3. Government protected fifteen (15) year span of Metro-Goldwyn-Mayer illegal, unaccountable payments from 1961 to 1976.

First illegal payment was fifty thousand dollars ($50,000) palmed off as paid advertising of a motion picture a full year from completion that obtained a permanent injunction against plaintiff.

4. Protected Wyman, Bautzer, Rothman & Kuchel, outside legal counsel for Metro-Goldwyn-Mayer, who aided and abetted the filing of false documents with the Securities & Exchange Commission investigating MGM for illegal payments; withholding payments made to Dummy Corporation Gallen Films, formed by MGM.

"Deal Memo: MGM will accept such assignment and will duly perform the obligations of the

employer thereunder, Gallen shall receive a production fee of $45,000.00 to be due and payable as follows: $25,000.00 on December 7, 1961. $20,000.00 on February 8, 1962."

5. Gave protection to written signed agreement to violate antitrust laws.

Dismissal is improper unless "[i] appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Gibson v. United States, 781 F.2d 1334, 1337 (9th Cir. 1986), quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)."

ILLEGAL DEAL

Under the deal, appellant's attorneys, the Law Offices of Joseph L. Alioto, agreed to join forces with the Law Offices of

Wyman, Bautzer, Rothman & Kuchel, a partnership, attorneys for Metro-Goldwyn-Mayer, Inc., a corporation; Cinerama, Inc., a corporation, and Gallen Films, S.A., a corporation.

The agreement was for the law firms to conceal each other's crimes and those of the corporations, and all involved.

Appellant's attorneys, the Law Offices of Joseph L. Alioto, were to drop antitrust suit, obtain a directed verdict in favor of the defendants, and to abandon plaintiff.

In exchange to fraudulently conceal from appellant and the jury the fact that at that point and time Joseph L. Alioto was a tax evader himself.

FRAUDULENT CONCEALMENT

The hiding or suppression of a material fact or circumstances which the party

is legally or morally bound to disclose. The employment of skill, trickery and ingenuity planned to prevent inquiry, escape investigation and to mislead or hinder the acquisition of information disclosing a right of action. Fundunburks v. Michigan Mut. Liability Co., 63 Mich.App. 405, 234 N.W.2d 546, 547.

United States District Court Judge William Matthew Byrne, Jr., on May 18, 1972, dismissed the jury and granted a JUDGMENT ON THE VERDICT (FOR DEFENDANT), Metro-Goldwyn-Mayer, Inc., a corporation; Cinerama, Inc., a corporation; Gallen Films, S.A., a corporation.

JOSEPH L. ALIOTO CONCEDED ON WEDNESDAY, OCTOBER 30, 1973, THAT HE PAID NO FEDERAL OR STATE INCOME TAXES IN EITHER 1971 OR 1972 AND NO FEDERAL TAX IN 1970.

The action covers four (4) PETITIONS TO THE UNITED STATES SUPREME COURT FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, U.S.C. No. 80-1039, No. 83-1208, No. 86-821, and No. 89-591.

This matter was never permitted a trial by jury. The shield: the doctrine of absolute judicial immunity, unlawful attorney-judge alliances, and finally the GOVERNMENT OF THE UNITED STATES.

On May 23 and 20, 1987, plaintiff turned to Four Hundred Thirty-Five (435) individual members of Congress, One Hundred (100) individual United States Senators, President Ronald Reagan, and Cabinet Members and asked if they would oppose an investigation by a special prosecutor, all to no avail.

ARGUMENT AMPLIFYING REASONS FOR ALLOWANCE OF A WRIT OF CERTIORARI

ISSUE NO. 1

Before: Chief Judge Browning, Skopil and Norris, Circuit Judges, No. 78-3728, Monte Lee, Plaintiff-Appellant vs. Law Offices of Joseph L. Alioto, and Law Offices of Wyman, Bautzer, Rothman and Kuchel, and Metro-Goldwyn-Mayer, Inc., a Corporation; Cinerama, Inc., a Corporation, and Gallen Films, S.A., and George Pal, Defendants-Appellees - concealment of false orders and judgments also was made clear as follows: Appellant filed a Motion for Oral Argument on August 25, 1980, stating as follows:

> "COMES NOW, Appellant, Monte Lee, and does respectfully move this Court for an Order granting him an oral argument, and for

cause states that the issues in this case are serious, novel, and far reaching proportions and legal significance, and oral argument would be helpful to the Court in understanding and reaching a determination of the issues presented herein."

Memorandum No. 78-3728 D.C., CV-78-1729-R, September 11, 1980, before: Browning, Chief Judge, Skopil and Norris, Circuit Judges.

"The motion for oral argument is denied. Dismissal of the action was proper. The defendant is absolutely immune from suit. Stump v. Sparkman, 435 U.S. 349, 355-57 (1978). Any antitrust claim arising out of the state court injunction is barred by res judicata

and collateral estoppel. The subsequent actions of the lawyers in furtherance of the same restraint that was the subject of the prior suit therefore could not give rise to an antitrust cause of action. Affirmed."

Chief Judge Browning, Skopil and Norris, Circuit Judges, concealed the following fact before them on September 11, 1980:

"The question of res judicata and collateral estoppel has been fully briefed, argued, and twice decided adversely to defendants. Reporter's Transcript of proceedings Thursday, February 10, 1972, Honorable William Matthew Byrne, Jr., Judge Presiding.

"The Court: As to Issue No. 2 on res judicata and collateral estoppel, it goes out of pre-trial."

Chief Judge Browning, Skopil and Norris, Circuit Judges, lied to the full court en banc and handed down a fraudulent Order No. 78-3728 filed November 19, 1980.

The panel constituted in the above case has voted to deny the petition for re-hearing and to reject the suggestion for a rehearing en banc.

"The full court has been advised of the suggestion for en banc rehearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed.R.App. 35(b).

"The Petition for Rehearing is denied and the suggestion for a rehearing en banc is rejected."

ISSUE NO. 2

In handing down their decision filed August 30, 1991, Browning, Sneed and Norris, Ninth Circuit Judges, overlooked the Ninth Circuit Court of Appeals' offense of Misprision of a Felony, the offense of concealing a felony committed by another. United States v. Perlstein, C.C.A.N.J., 126 F.2d 789, 798. Misprision of a felony is guilty of a federal crime. 18 U.S.C.A. para.4.

Browning, Sneed and Norris had positive proof before them that false orders and adverse judgments were handed down by United States District Court Judges for the Central District of California Harry Pregerson and Manuel L. Real. See Monte Lee Plaintiff and Appellant vs. United States Government, Defendant and Appellee, No. 90-56362 (No. 90-3119-R).

EFFECT OF VIOLATIONS

(a) Appellant has been injured in his efforts to compete, remain profitable and expand in the field of distribution in the United States; and

(b) Years of litigation placed a cloud on appellant's motion picture rendering it worthless; no one wanting to participate in or buy a motion picture tied up in litigation, resulting in a loss of One Million Five Hundred Thousand Dollars; and

(c) Lost profits by reason of lost sales that appellant would have made in absence of the hereinabove violations; and

(d) Appellant otherwise has been injured in his business and property.

The appellees sanctioned the herein acts and each of them, with malice and bad faith and for the purpose of intentionally oppressing appellant. Accordingly, appellant

is entitled to punitive damages in the amount of Fifty Million Dollars.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

DATED: Jan 31, 1992

Respectfully submitted,

Monte Lee

MONTE LEE
Petitioner Pro Se

APPENDIX

CIVATT INVATT
15 CLOSED

NON-PUBLIC DOCKET FOR
Ninth Circuit Court of Appeals

Filed: 12/26/90

Court of Appeals Docket No.: 90-56362
Nsuit: 2950 Constitutional state stat(USdf
Lee v. US Government
Appeal from: Central District of California
- -
Case type information:
1) civil
2) US
3)
- -
Lower court information:

District: 0973-2 : CV-90-3119-R
court reporter: Donna Stephenson,
CSR COORDINATOR
presiding judge: Manuel L. Real,
Chief Judge
Date Filed: 6/18/90
Date order/judgment: 10/29/90
Date NOA filed: 11/5/90
- -
Fee status: paid
- -
Prior cases:
88-6341 JTS BBF DRT
Date filed: 8/19/88
Date disposed: 6/5/89
Disposition: af/mem

Current cases:
None
- -

CIVATT INVATT
15 CLOSED

Panel Assignment:
Panel: JRB JTS WAN : **/**/**
Date of decision: **/**/**/
- -

Docket as of December 4, 1991 10:11 am
NON-PUBLIC

CIVATT INVATT
15 CLOSED

INTERNAL USE ONLY: Proceedings include all events. 90-56362 Lee v. US Government

MONTE LEE
Plaintiff - Appellant

Monte Lee
[COR LD NTC prs]
6520 Selma Avenue
Apt. "B"
Hollywood, CA
90028
213/465-6575

v.

UNITED STATES GOVERNMENT
Defendant-Appellee

Roger E. West, Esq.
[COR LD NTC aus]
UNITED STATES ATTORNEYS OFFICE
Civil Division
312 N. Spring St.
Los Angeles, CA
90012-4758

Docket as of December 4, 1991 10:11 am
NON-PUBLIC

CIVATT INVATT
15 CLOSED

INTERNAL USE ONLY: Proceedings include all events. 90-56362 Lee v. US Government

MONTE LEE

Plaintiff - Appellant

v.

UNITED STATES GOVERNMENT

Defendant - Appellee

Docket as of December 4, 1991 10:11 am
NON-PUBLIC

CIVATT INVATT
15 CLOSED

INTERNAL USE ONLY: Proceedings include all events. 90-56362 Lee v. US Government

12/26/90	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Sent appellant(s) civil appeals docketing statement. setting schedule as follows: CADS due 1/9/91; appellant's designation of RT is due 11/15/90; appellee's designation of RT is due 11/26/90; appellant shall order transcript by 12/5/90; court reporter shall file transcript by 1/14/91; appellant's opening brief is due 2/21/91; appellees' brief is due 3/25/91; appellants' reply brief is due 4/8/91; [90-56362] (jhc)
1/22/91	2	Filed attorney for Appellee Civil Appeals Docketing Statement werved on 1/18/91 (to CONFATT) [90-46362] [90-56362] (lu)
2/14/91	3	Filed Original and 15 copies Appellant Monte Lee opening brief (Informal: n) 17 pages and five excerpts of record in 1 volumes; served on 2/12/91 [90-56362] (tsp) [Entry date 02/25/91]

3/25/91	4	Filed original and 15 copies appellee US Govvernment's 11 pages brief, ; served on 3/21/91 [90-56362 (ckp) [Entry date 03/26/91
4/4/91	5	Filed original and 15 copies Monte Lee reply brief. (informal; n) 5 pages; served on 4/2/91 [90-56362] (tsp) [Entry date 04/06/91]
6/6/91	6	Sent to staff attys for inventory. (bp)
6/29/91	7	Monte Lee appeals pro se the district court's order dismissing his action against the government and enjoining him from refiling his complaint without the court's permission. ISSUES: 1. Did the dc err by dismissing the action with prejudice? 2. Did the dc err by issuing the vexatious litigant order? See May v. U.S., 906 F.2d 467 (9th Cir. 1990); Wood v. Santa Barbara Chamber of Commerce, 705 F.2d 1515 (9th Cir. 1983). NOTE: Prior case 88-6341 wt=1 Atty: J. Nutt Date: 6/18/91 [90-56362 (rk)
7/8/91	8	Calendar check performed [90-56362 (th)

7/12/91	10	Screening letter sent. [90-56362] (th)
8/23/91	12	SUBMITTED TO SCREENING PANEL 161. [90-56362] [90-56362] (th) [Entry date 08/26/91
8/23/91	13	WAN, author [90-56362] [NOTE: this is NOT public information] (th) [Entry date 08/26/91]
8/30/91	14	FILED MEMORANDUM OPINION: AFFIRMED (Terminated on the Merits after Submission Without Oral Hearing; Affirmed; Written, Unsigned, Unpublished. James R. BROWNING; Joseph T. SNEED; William A. NORRIS, author.) FILED AND ENTERED JUDGMENT. [90-56362] (rc)
9/12/91	15	[1995218] Filed original and 40 copies Appellant Monte Lee petition for rehearing with suggestion for rehearing en banc. (PANEL AND ALL ACTIVE JUDGES) 8 ;.pages, served on 9/11/91 [90-56362] (rc)
10/24/91	16	Filed order (James R. BROWNING, Joseph T. SNEED, William A. NORRIS) aplt's petition for rehearing is denied, and the suggestion for rehearing en banc is rejected. [1995218-1] [90-56362] (rc)

CIVATT INVATT
15 CLOSED

10/29/91	18	Per Judge Norris Chambers do not issue mandate. [90-56362] (rc)
10/30/91	19	Filed order (James R. BROWNING, Joseph T. SNEED, William A. NORRIS) the order filed 10/24/91 is vacated. The petition for rehearing filed 9/12/91 remains under submission pending further order of this ct. [90-56362] (rc)
11/25/91	20	Filed order (James R. BROWNING,, Joseph T. SNEED,, William A. NORIS,): the petition for rehearing is denied, and the suggestion for a rehearing en banc is rejected. [90-56362] (dmd)

APPENDIX B

FILED

OCT 24 1991

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MONTE LEE,	) No. 90-56362
Plaintiff-Appellant,	) D.C. No. CV-90-3119-R
v.	) C. D. California
UNITED STATES GOVERNMENT,	
Defendant-Appellee.	

Before: BROWNING, SNEED, and NORRIS, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellant's petition for rehearing is denied, and the suggestion for rehearing en banc is rejected.

APPENDIX C

FILED

OCT 30 1991

CATHY A. CATTERSON

MONTE LEE, Plaintiff-Appellant, vs. UNITED STATES GOVERNMENT, Defendant-Appellee.	No. 90-56362 DC# CV-90-3119-R Central California ORDER

Before: BROWNING, SNEED and NORRIS, Circuit Judges

The order filed October 24, 1991 is vacated. The petition for rehearing filed September 12, 1991 remains under submission pending further order of this court.

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MONTE LEE,

Plaintiff(s)

VS

UNITED STATES OF AMERICA,

Defendant(s)

CASE NUMBER

CV 90-3119-R

NOTICE OF HEARING ON FILING AND SPREADING JUDGMENT OF COURT OF APPEALS (CIVIL)

To:

I hereby certify that this document was served by first-class mail, postage prepaid to all counsel (or parties) at their request to the recent address of record in this action on this date.

DATED (DEC 26 1991

(init)
Deputy Clerk

FILED

DEC 26 1991

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT of CALIFORNIA
By (init) Deputy

PLEASE TAKE NOTICE that the judgment of the United States Court of Appeals, Ningh Circuit, having been received in the above-entitled case, this matter has been set for hearing

on 1-13-92 at 11:00 o'clock before the Honorable Manuel L. Real, United States District Judge, in Courtroom No. 8, United States Courthouse, 312 N. Spring Street, Los Angeles, California. It will NOT be necessary for all counsel to be present at that time.

CLERK, U.S. DISTRICT COURT

By: /s/
Deputy Clerk

Dated: DEC 26 1991

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 90-56362
CT/AG : CV-90-3119-R

MONTE LEE

Plaintiff - Appellant

v.

UNITED STATES GOVERNMENT

Defendant - Appellee

LODGED

DEC 16 1991

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
By (init.) Deputy

APPEAL FROM the United States District Court for the Central District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central

District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered August 30, 1991.

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court

ATTEST

DEC 12 1991

by: _____
Deputy Clerk

APPENDIX E

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Civil Minutes - Appeals

Case No. CV90-3119-R Date 1-13-92

Title Monte Lee -v- U.S.A.

PRESENT: THE HON. Manuel L. Real

Carolyn Trump	Lena Van Smith
Deputy Clerk	Court Reporter

ATTORNEYS FOR PLAINTIFF	ATTORNEYS FOR DEFEMDAMT
1) N/A	1) N/A
2)	2)
3)	3)

PROCEEDINGS: FILING AND SPREADING MANDATE OF THE NINTH CIRCUIT COURT OF APPEALS.

xx IN COURT ___ IN CHAMBERS (No hearing necessary)

___ COUNSEL NOTIFIED

THE COURT ORDERS that the mandate of the Ninth Circuit Court of Appeals:

xx Affirming ___ Remanding

___ Reversing and Remanding

___ Affirming in part, reversing in part

___ Dismissing Appeal

___ The record reflects that costs of the prevailing party were taxed by the Ninth Circuit Court of Appeals in the amount of

$_____ on _____

___ Other _____

is hereby filed and spread upon the minutes of this U.S. District Court.

(ENTERED_____) ___ MAKE JS-5

Initials of Deputy Clerk /init/

Supreme Court, U.S.
FILED
MAY 15 1992
OFFICE OF THE CLERK

(2)

No. 91-1489

In the Supreme Court of the United States

OCTOBER TERM, 1991

MONTE LEE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General

JAMES F. RILL
Assistant Attorney General

CATHERINE G. O'SULLIVAN
ANDREA LIMMER
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether the court of appeals properly affirmed the dismissal of a complaint containing the same claims that had been dismissed with prejudice in several previous cases.

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In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-1489

MONTE LEE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is unreported, but the judgment is noted at 942 F.2d 792 (Table).

JURISDICTION

The judgment of the court of appeals was entered on August 30, 1991. A petition for rehearing with suggestion for rehearing en banc was denied on November 25, 1991. The petition for a writ of certiorari was filed on February 5, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1966, petitioner sued Metro-Goldwyn-Mayer, Inc., and Cinerama Productions, Inc., under the

Clayton Act § 4, 15 U.S.C. 15, alleging that the defendants had violated the antitrust laws and injured him in his ability to market a motion picture called "Grimm's Fairy Tales." *Lee* v. *Mosk*, No. CV 66-1804-WMB (C.D. Cal. May 18, 1972) (*MGM*). Pet. 4. A directed verdict was entered in favor of the defendants on May 18, 1972. Pet. 13.

Proceeding pro se, petitioner then sued the law firm that represented him in the first suit, the defendants in the first suit, and the district judge who entered the directed verdict. The complaint repeated the allegations that formed the basis for the *MGM* suit, claimed that his lawyers had fraudulently colluded with opposing counsel in that case to secure the directed verdict, and alleged that the district court's directed verdict ruling was "false and void." See Pet. 11-12; Petitioner's C.A. Br. 7-9. The district court dismissed the suit on the ground of absolute judicial immunity, res judicata, and collateral estoppel. See Pet. 16-17. The Ninth Circuit affirmed, and this Court denied certiorari. *Lee* v. *Law Offices of Joseph L. Alioto*, 633 F.2d 222 (1980), cert. denied, 450 U.S. 967 (1981).

Over the next several years, petitioner engaged in a pattern of suing numerous officials from each branch of the federal government. In each case, petitioner repeated his allegations against MGM and Cinerama, his lawyers, and the trial court judges who ruled against him. In addition, the complaints asserted that government defendants had "protected" the unlawful activities of MGM and failed to uphold their constitutional duties by refusing to review or overturn the dismissal of petitioner's previous suits.[1] Each

[1] Petitioner challenged the President's failure to "demand the U.S. Supreme Court to open its door" to petitioner's

complaint was dismissed. *Lee* v. *Burger*, No. 83-5789 (9th Cir. Sept. 7, 1983), cert. denied, 465 U.S. 1067 (1984); *Lee* v. *Reagan*, No. CV 85-3604-WJR (C.D. Cal. Mar. 27, 1985), aff'd, 789 F.2d 921 (9th Cir. 1986) (Table), cert. denied, 479 U.S. 1035 (1987); *Lee* v. *Biden*, No. CV 88-2090-RG(E) (C.D. Cal. Aug. 4, 1988), aff'd, 876 F.2d 897 (9th Cir.) (Table), cert. denied, 493 U.S. 984 (1989).

2. On June 18, 1990, petitioner, proceeding pro se, filed the present action, and named as the defendant the "United States Government." Petitioner stated that "[t]his action covers four * * * petitions to the United States Supreme Court." See Compl. at 3 (capitalization omitted) (citing the *Alioto*, *Burger*, *Reagan*, and *Biden* petitions). Petitioner then repeated claims that he had made in those prior suits. Petitioner alleged that then-Judge Kennedy, as a member of a Ninth Circuit panel that affirmed the dismissal of one of plaintiff's actions, "act[ed] outside the scope of his employment" by "extend[ing] judicial immunity" to defendants in petitioner's prior suits; that the Senate Judiciary Committee "approved the unlawful extension of judicial immunity" by voting to confirm Justice Kennedy to the Supreme Court; that the Supreme Court and the "[g]overnment," by denying certiorari in the prior cases, "gave protection * * * to Metro-Goldwyn-Mayer, Inc., a corporate tax evader." *Id.* at 5 (capitalization omitted). Peti-

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claims; the Attorney General's failure to appoint a special prosecutor to examine petitioner's claims against the judiciary; the judiciary's invocation of the doctrine of judicial immunity; this Court's refusal to grant several petitions for writs of certiorari; and the Senate's confirmation of Justice Kennedy (who had been a member of one of the Ninth Circuit panels to rule against petitioner) as an Associate Justice. See Gov't Mot. to Dis. 21, Exhs. A-C.

tioner's complaint also repeated the claims against the defendants in the *MGM* suit. *Id.* at 5-11.

The complaint alleged that the "three branches of government * * * have conspired together to deprive" petitioner of his rights under the Constitution and various civil rights statutes. See Compl. at 13 (citing 42 U.S.C. 1983, 1985, 1986). The Complaint cited various provisions of the U.S. Constitution as a basis for jurisdiction. *Id.* at 1-2. The Complaint sought an order that Congress and the President had wrongfully "protected [the] unlawful extension of judicial immunity"; that the Supreme Court had wrongfully refused to "interpret the laws" by denying certiorari in petitioner's four prior cases; and that the defendants generally had violated their "oath to uphold the Constitution" and denied petitioner due process and equal protection of the laws by "permitt[ing] the illegal use of the American People's court system by a dummy corporation formed to conceal proceeds, evade taxes, and swindle investors."[2] *Id.* at 14-15 (capitalization omitted). Petitioner sought compensatory damages of $1.5 million for the alleged worth of the motion picture "Grimm's Fairy Tales," and $50 million in punitive damages. *Id.* at 14.

On October 26, 1990, the district court dismissed the complaint on the ground that the claims were identical to those filed in previous actions. The court also found that the repeated filing of complaints containing matters previously adjudicated was frivolous, harassing to defendants, and abusive of the judicial process. The court therefore enjoined petitioner from filing any other complaint dealing with the same

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[2] The last allegation refers to petitioner's claims in the 1966 *MGM* litigation.

subject matter without first obtaining leave of the court.

3. The court of appeals affirmed in an unpublished memorandum decision. It held that the district court did not err in dismissing the action, which the court characterized as frivolous and repetitious. See *Lee* v. *United States Government*, No. 90-56362 (9th Cir. Aug. 30, 1991) (942 F.2d 792 (Table)). The court also upheld the district court's injunction against filing future complaints without court approval.[3]

ARGUMENT

The courts below properly dismissed petitioner's complaint as repetitive and frivolous. Petitioner's present complaint—like each complaint he has filed since the *MGM* litigation was decided adversely to him in 1971—stems from dissatisfaction with the outcome of that case. First, petitioner sued his lawyers and other participants in the *MGM* litigation, alleging all manner of improprieties; that litigation ended in this Court's denial of certiorari in 1981. See *Lee* v. *Law Offices of Joseph L. Alioto*, 633 F.2d 222 (9th Cir. 1980) (Table), cert. denied, 450 U.S. 967 (1981). Since then, petitioner has repeatedly sued various government officials and entities on the ground that they permitted the alleged injustices against petitioner in *MGM* and *Alioto* to occur. Each of those actions also ended with this Court's denial of certiorari. See *Lee* v. *Burger*, No. 83-5789 (9th Cir. Sept. 7, 1983), cert. denied, 465 U.S. 1067 (1984); *Lee* v. *Reagan*, No. CV 85-3604-WJR (C.D. Cal. Mar. 27, 1985), aff'd, 789 F.2d 921 (9th Cir. 1986) (Table), cert. denied, 479 U.S. 1035 (1987); *Lee* v. *Biden*, No. CV 88-

[3] Petitioner has not challenged in this Court the injunction against his filing additional claims without leave of court.

2090-RG(E) (C.D. Cal. Aug. 4, 1988), aff'd, 876 F.2d 897 (9th Cir.) (Table), cert. denied, 493 U.S. 984 (1989).

It is thus clear that any claims petitioner may have had as a result of his alleged mistreatment in the *MGM* litigation were resolved long ago. In the present action, petitioner claims that in the *Alioto* decision, the court of appeals handed down a "fraudulent" order (Pet. 8), "overlooked" the offense of misprision of a felony,[4] and ignored "positive proof * * * that false orders and adverse judgments were handed down by" the lower court judges. Pet. 19. Although it is not clear from the present petition for certiorari what constitutes the basis for the alleged "fraud" and "false order[]," it is clear that the alleged malfeasance stemmed from the *MGM* litigation. It is also clear that the federal courts have repeatedly been forced to consider the same allegations arising from the same set of operative facts, and have repeatedly found petitioner's claims to be without merit. The district court accordingly did not err in dismissing on grounds of claim preclusion. See *Federated Dep't Stores, Inc.* v. *Moitie*, 452 U.S. 394, 401 (1981); *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 335-337 (1979); *Baldwin* v. *Iowa State Traveling Men's Ass'n*, 283 U.S. 522, 525-526 (1931).

[4] It appears that petitioner raised the issue of misprision of a felony for the first time in his petition for rehearing in the present case (see Pet. for Reh'g), more than ten years after *Alioto* was decided.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

JAMES F. RILL
Assistant Attorney General

CATHERINE G. O'SULLIVAN
ANDREA LIMMER
Attorneys

MAY 1992

(4)

No. 91-1489

Supreme Court, U.S.
F I L E D
MAY 26 1992
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

MONTE LEE,

Petitioner,

vs.

UNITED STATES GOVERNMENT,

Respondents.

REPRINTED COPY

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY BRIEF TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION

MONTE LEE
6520 B Selma Avenue
Hollywood, California 90028
(213) 465-6575

Petitioner Pro Se

QUESTION PRESENTED

Whether the court of appeals properly affirmed the dismissal of a complaint oontaining the same claims that had been dismissed with prejudice in several previous cases.

LIST OF PARTIES TO THE PROCEEDING

Monte Lee and the Executive, Legislative and Judicial branches of government.

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No. 91-1489

IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1991

MONTE LEE,

Petitioner,

vs.

UNITED STATES GOVERNMENT,

Respondents,

PETITIONER'S REPLY BRIEF TO BRIEF FOR THE UNITED STATES IN OPPOSITION

JURISDICTION

A timely petition for rehearing with suggestion for rehearing en banc was denied on November 25, 1991. The petition for a writ of certiorari was filed on February 5, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254, n.7.

CONSTITUTION, FEDERAL AND STATE STATUTES

The relevant portions of the Constitution and federal and state statutes are adequately set forth in the Reply to the Opposition.

STATEMENT

Plaintiff filed this action on June 18, 1990, naming as defendant the UNITED STATES GOVERNMENT. The Complaint for Damages alleges that it is UNCONSTITUTIONAL FOR THE GOVERNMENT TO PROTECT TAX EVADER, OBSTRUCTION OF JUSTICE, and VIOLATOR OF ANTITRUST LAWS.

On February 15, 1987, plaintiff informed Congress that on January 12, 1987, the Justices of the United States Supreme Court, on behalf of themselves, the Government, and the President, chose to aid, and abet, crime in the People's court system by

invoking the supposed doctrine of judicial immunity with the words "certiorari denied." That the doctrine of absolute judicial immunity served as a license to aid, abet, protect and cover up illegal attorney/judge alliances knowingly and intentionally protecting crime in the People's courtrooms, and that PRESIDENT RONALD REAGAN, Attorney General WILLIAM FRENCH SMITH, Solicitor General REX E. LEE, Chief Justice WARREN E. BURGER, et al., had the power to prevent or aid in preventing the commission of the same, but refused to do so. Instead, they chose to protect the crime and the immunity.

This action covers four (4 PETITIONS TO THE UNITED STATES SUPREME COURT FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, U.S.C. No. 80-1039, No. 83-1208, No. 86-821, and No. 89-591.

The justices were reminded that Article 6 of the Constitution makes the Constitution the "supreme law of the land." In 1803, Chief Justice MARSHALL, speaking for a unanimous Court, referring to the Constitution, as "the fundamental and paramount law of the nation," declared in the notable case of Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803) that "It is emphatically the province and duty of the judicial department to say what the law is."

"Every state legislator and executive and judicial officer is solemnly committed by oath to support this Constitution."

The United States Supreme Court slammed its door shut on the four (4) petitions with the words, "certiorari denied."

That on May 23 and on May 30, 1987, plaintiff turned to Four Hundred Thirty-five (435) individual member of Congress, One Hundred (100) individual United States

Senators, President RONAL REAGAN, and Cabinet Members and asked if they would oppose an investigation by a special prosecutor, all to no avail.

The Complaint is filed and these proceedings are instituted against the Government for its violations of the following:

Article I, Section 1

THE LEGISLATIVE BRANCH OF GOVERNMENT PROTECTED UNLAWFUL EXTENSION OF JUDICIAL IMMUNITY.

Article II, Section 3

PRESIDENT RONALD REAGAN PROTECTED UNLAWFUL EXTENSION OF JUDICIAL IMMUNITY.

The Constitution commands that the President "shall take care that the laws be faithfully executed," and specific congressional statutes direct executive assistance in carrying out court decisions, and he refused to do so.

Article III

The people gave the Supreme Court (called the Judicial Branch) the power to interpret the laws. THis includes the power to decide whether or not a law, either state or federal, is in accord with the Constitution. This the United States Supreme Court refused to do in four (4) petitions.

Article VI

Violation of oath to uphold the Constitution.

Amendment 14

Violated...guarantee to everyone due process of law, and equal protection of the laws.

ARGUMENT

The Ninth Circuit ruled in effect that judges are immune from liability even if they knowingly protect written agreement to

violate anti-trust laws, knowingly protect Dummy corporation formed to conceal proceeds, and knowingly cover up illegal attorney/ judge alliances.

The Ninth Circuit's disposition was without a published opinion under Ninth Circuit Rule 36-3. The Ninth Circuit was aware that the rule would serve well to cover up unlawful acts.

Unpublished rulings escape public notice. The decisions are hidden because they come in "unpublished" opinions from the state Courts of Appeal. As a legal matter, an unpublished opinion creates no precedent and cannot be cited in any other cases. It also escapes the attention of the public and lawyers since it is not printed in the advance sheets of court opinions. The rule unlawfully served to obtain four (4) denials of Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit,

No. 80-1309, No. 83-1208, No. 86-821, No. 89-591.

The rule and the Executive Branch and Legislative Branch of the government's refusal to investigate the matter provided the United States Supreme Court with the means to protect those unlawful acts with the words, "certiorari denied."

The Executive and the Legislative Branches of government conceded to the Judicial Branch of government the right to obstruct justice and the right to serve the people in a dual capacity, namely, to pick and choose who they will punish and who they will protect (whatever their crime may be) enabling the Judicial Branch to violate its sworn obligation to uphold the Constitution and the laws of the United States of America in violation of Article I, Section I, and Article II, Section 3.

The Government's violation of the Constitution and laws is so obvious that it can be correctly identified by the man in the street, the man unlearned in law, the man who may well never even read the Constitution. It is difficult to imagine any judicial frame of mind that could save the Government from the legitimate charge of willful violation of the oath of office by unanimous conspiracy among the members of the three branches of Government not one of whom raised his voice to analyze the conduct of the Court and to point to the simple and obvious truth that the Supreme Court Justices, under color of their official positions, were violating not only appellant's rights, but also the invididual rights of the American People.

The three branches of government in so conducting themselves are alleged hereinabove as official governmental decision makers

acting under color of law, have conspired together to deprive plaintiff of the rights, privileges and immunities guaranteed him by the Constitution of the United States and the laws enacted thereunder in violation of 42 U.S.C. 1985, 42 U.S.C. 1986, and all hereinabove violations, and are liable to plaintiff injured under 42 U.S.C.A.

> "Right to trial by jury is guaranteed with respect to criminal cases by Art.111, Sec.2, cl.3 of U.S. Const., and with respect to 'suits at common law, where the value in controversy shall exceed twenty dollars,' by the Seventh Amendment. Such right is also preserved by rule of court (e.g. Fed.R.Civil P.38) and by the Fifth Amendment, which provides, inter alia, for indictment by grand jury, and the Sixth Amendment,

which contains further specifications respecting jury trial in criminal cases.

"In addition, state constitutions provide for right to jury trial and the Supreme Court has held that the Fourteenth Amendment guarantees a right of jury trial in all state criminal cases which, were they to be tried in federal court, would come within the Sixth Amendment's guarantee." Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491.

LAW OFFICES OF JOSEPH L. ALIOTO

ABANDONED LEE ON MAY 24, 1972.

Law Offices of
JOSEPH L. ALIOTO
One Eleven Sutter Street
San Francisco, California 94104

(415)434-1200

May 24, 1972

Mr. Monte Lee
6711 Yucca Street
Los Angeles, California 90029

Dear Monte:

As Brian and I stated to you on Thursday, May 18, 1972, our office will no longer represent you in your action against Metro-Goldwyn-Mayer and Cinerama. I did tell you that I would attempt to make some evaluation of the present position of your lawsuit and give you my best opinion of the effect of Judge Byrne's ruling which directed a verdict in favor of the defendants.

As I explained to you before and during the trial of your case there are certain procedural steps left open to a litigant after trial has terminated. It is my opinion that you should retain and consult with

another attorney in order to become fully advised as to what these procedural steps are so as to best safeguard your interests. This should be done immediately.

It is my understanding that, under the Federal Rules of Civil Procedure, a plaintiff like yourself has a period of 10 days after the entry of judgment within which to make a motion for a new trial. You may wish to move under F.R.C.P. 60 for release from Judge Byrne's ruling. Such a motion must be made within a "reasonable time." In the event you wish to appeal the order granting a directed verdict, it is my understanding that you have 30 days from the entry of judgment from which to file your notice of appeal.

With respect to providing you with the above-going information as to procedural alternatives and time periods, we can only warn you that, since our association as attorney/client terminated on May 18, 1972 after the trial of this matter, you should immediately contact other counsel as to these matters and that you are not to rely upon or construe any of the information we are providing you with in this letter as "the advice of my attorneys". We are telling you this so that you will be in the best possible position to consult another lawyer with respect to these matters and protect your interests as you conveive them to exist.

It was our pleasure to be able to represent you in this litigation and we are sorry that the rather intensive efforts which we devoted to your case did not conclude with a result more satisfactory to your.

You know that we have a box of documents along with certain pleadings and correspondence which we are holding here for your directions, the other box of documents was left, per your instructions, at the Miramar Hotel in your name.

We hope that you will keep in touch and advise us of eventualities. Please give my personal regards to Martin and thank him for his cooperation.

Very truly yours,

/s/
Lawrence J. Appel
For Law Offices of
Joseph L. Alioto

LJA:msc

CONCLUSION

For the foregoing reasons, this Reply Brief to the Brief for the United States in Opposition should be granted.

DATED: 5/26/92

Respectfully submitted,

MONTE LEE
Petitioner Pro Se